IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ISA BRITTAIN and WILLIE DUFFIE,) Case No. 18-342 L		
Plaintiffs,)	Judge:	FILED
VS.)	_	MAR 6 2018
THE UNITED STATES OF AMERICA,)		U.S. COURT OF FEDERAL CLAIMS
Defendant.)		

COMPLAINT

JURISDICTION

- 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1494(a)(1) ("Tucker Act") because this action presents a claim against the United States which is founded upon the Constitution and Statutes of the United States.
- 2. Plaintiffs' claims are based upon 1) The Fifth Amendment to the United States Constitution prohibiting the taking of private property for public use, without just compensation; 2) The National Trails System Act Amendments of 1983; 16 U.S.C. § 1247(d) ("Trails Act"); 3) The Tucker Act, 28 U.S.C. § 1491(a) ("Tucker Act"); and 4) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4654(c) (2000).

COUNT I

(TAKINGS CLAIM)

- 3. CSX Transportation, Inc. formerly owned an easement for railroad purposes, extending from milepost XXC 0.0, which begins at the switch to the Norfolk Southern, Oakland Junction near the Ormewood Station, and ends at milepost XXC 4.4 near Glenwood Ave. SE, a distance of 4.40 miles in the City of Atlanta, Fulton County, Georgia (the "Railroad Line").
 - 4. The easement lay across property owned by Plaintiffs.

- 5. Upon abandonment of the easement and/or authorization of use beyond the scope of the easement, Plaintiffs' property would have been unburdened by any easement.
- 6. Plaintiff Isa Brittain owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Isa Brittain is located in Fulton County, Georgia, and includes parcel number 14 008800040093, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.
- 7. Plaintiff Willie Duffie owned land adjacent to the Railroad Line on the date of the taking, February 6, 2018. The property owned by Willie Duffie is located in Fulton County, Georgia, and includes parcel number 14 008800020426, and includes but is not limited to the fee title to all that property to the centerline of the abandoned right-of-way that is now subject to an easement for interim trail use.
- 8. On February 6, 2018, the Surface Transportation Board ("STB") issued a Notice of Interim Trail use ("NITU") relating to the following segment of the Railroad Line: between milepost XXC 0.0 and milepost XXC 4.4, a distance of 4.40 miles, in Fulton County, Georgia.
- 9. But for operation of the Trails Act, Plaintiffs would have the exclusive right to physical ownership, possession, and use of their property free of any easement for recreational trail use or future railroad use.
- 10. By operation of the Trails Act, the United States took the Plaintiffs' property which it is Constitutionally obligated to pay just compensation.
- 11. Plaintiffs owned the aforementioned property on the date of the taking, February 6, 2018, and are therefore proper claimants for compensation.

Case 1:18-cv-00342-LKG Document 1 Filed 03/06/18 Page 3 of 4

12. Plaintiffs' property includes but is not limited to the fee title to the property

underlying the former railroad easement.

13. The United States' actions damaged Plaintiffs by taking a portion of Plaintiffs'

property and by diminishing the value of the remaining property and by attenuating delay

damages based upon the delayed payment of compensation.

WHEREFORE, Plaintiffs respectfully request a monetary judgment in their favor

representing the full fair market value of the property taken by the United States on the date it

was taken, including severance damages, delay damages, interest, and costs and attorneys' fees

incurred by Plaintiffs and for such further relief as this Court may deem just and proper.

Date: March 6, 2018

3

Respectfully submitted by:

STEWART, WALD & MCCULLEY, LLC

By

Steven M. Wald Michael J. Smith

12747 Olive Blvd., Suite 280

Saint Louis, MO 63141

Telephone:

(314) 720-0220

Facsimile:

(314) 899-2925 (facsimile)

wald@swm.legal smith@swm.legal

-and-

Thomas S. Stewart Elizabeth G. McCulley 2100 Central St., Suite 22 Kansas City, MO 64108

Telephone: (816) 303-1500

Facsimile:

(816) 827-8068 (facsimile)

stewart@swm.legal mcculley@swm.legal

ATTORNEYS FOR PLAINTIFFS